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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,206	09/12/2003	Rodney H. Thomas	9847/000005/US	9112
28997	7590	01/31/2005	EXAMINER	
HARNESS, DICKEY, & PIERCE, P.L.C.			AMIRI, NAHID	
7700 BONHOMME, STE 400			ART UNIT	PAPER NUMBER
ST. LOUIS, MO 63105			3635	

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/662,206	THOMAS, RODNEY H.	
	<b>Examiner</b> Nahid Amiri	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 12 December 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) 5,6,15 and 24-28 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-4,7-14 and 16-23 is/are rejected.  
7)  Claim(s) 4, 14, 20 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 11 March 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/07/04; 11/06/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other; exhibit (see attachment).

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 1-4, 7-14 and 16-23 in the reply filed on 20 December 2004 is acknowledged. The traversal is on the ground(s) that claims 1, 8 and 17 are generic. Therefore, all the claims 1-23 should be considered and examined. This is not found persuasive because having generic claims are not sufficient enough to defeat the restriction. Therefore, claims 5-6, 15 stand drawn to the nonelected invention and or species.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

Claims 1-2, 4, 14, 17-23 objected to because of the following informalities:

Claims 1-2 and 17-23 are construed to be subcombination claim rather than combination claim. Claims 1 and 17 directed to cover and the recitation of preamble of claim 1, lines 1-2 “for a board.....opposed sides,” and claim 17, lines 1-2, “for an .....opposed sides”, there are not accorded patentable weight. Claims 1-2, applicant attempt to defines the slot in terms of any boards since the boards are not claimed positively. Therefore, The examiner will examining the claims as subcombination.

Claims 4, 14 and 20, line 4, it is not clear if “the corresponding at least one opening” is the same as opening of claim 3, line 2, “at least one opening”, since claim 3 the opening is located on side portions of the cover and claim 4 opening is located on overhangs of the side edges of the cover’s top.

Claims 4, 14 and 20 recite the limitation “**the corresponding at least one opening**” in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1-2, 6-7 are rejected under 35 U.S.C. 102(a) as being anticipated by US Pub. No.: 2002/0023395 a1 Pasterchick.**

In regard to claims 1-2: Pasterchick discloses the claimed invention Figs. 1-3, page 1, paragraph 0018, a cover 2 for covering deck including a top 14, a bottom and a pair of opposed side portions 6 and 8 downwardly depending from the top portion 14 to the decking wood each of the cover's side portions 6 and 8 defining at least one slot S (see attachment) and side portions 6 and 8 including engagement portions (bents) 10 for engaging the decking wood.

In regard to claims 6-7: Pasterchick discloses the claimed invention Figs. 1-2, page 1, paragraph 0019, the side portions 6 and 8 of the cover 2 having inwardly bent 10 portions for engaging the decking of wood.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3, 17-19, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasterchick.**

In regard to claim 3: Pasterchick discloses the claimed invention except each of the side portions includes at least one opening therein for venting an area between the board and the cover when the cover is positioned on the board. It would have been obvious to one of ordinary skill in the art at the time of invention was made to drill an hole on both side portions in order to create at least one opening for air ventilation between cover and board.

In regard to claims 17-19: Pasterchick discloses the claimed invention Figs. 1-3, page 1, paragraph 0018, a cover 2 for covering deck including a top 14, a bottom and a pair of opposed side portions 6 and 8 downwardly depending from the top portion 14 to the decking wood each of the cover's side portions 6 and 8 defining at least one slot S (see attachment). Pasterchick does not disclose the side portions having at least one opening therein for venting. It would have been obvious to one of ordinary skill in the art at the time of invention was made to drill an hole on both side portions in order to create at least one opening for air ventilation between cover and board.

In regard to claims 22-23: Pasterchick discloses the claimed invention Figs. 1-2, page 1, paragraph 0019, the side portions 6 and 8 of the cover 2 having inwardly bent 10 portions for engaging the decking wood.

**Claims 8-10, 12-13, 16 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,794,390 Oliveri et al., in view of Pasterchick.**

In regard to claim 8: Oliveri discloses the claimed invention Fig. 1, a deck 46 comprising at least one floorboard 44 having a top, a bottom, and a pair of opposed sides, at least one joist below the floorboard, and at least one cover 42 having a top portion 58 and a pair of opposed side portions 62 downwardly depending from the top portion 58, the cover's top portion 58 and side portions 62 being adapted to generally cover at least the top and sides of the floorboard 44, Oliveri does not disclose each of the cover's side portions including at least one slot. Pasterchick teaches Fig. 1, the side portions 6 and 8 of the cover 2 having at least one slot. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the

side portions with at least one slot in order to create a inwardly locking tab which acts as a small anchor would hold main segment of the cover to the board as taught by Pasterchick.

In regard to claim 9: Oliveri discloses the claimed invention Fig. 3, the cover's side portions 62 of the cover 42 grip the floorboard 44 between the side portions 62 when is positioned on the floorboard 44.

In regard to claims 10, 12: Oliveri discloses the claimed invention except the slots is sized to accommodate the joist when the joist is positioned relative to the floorboard at an oblique angle between about forty five to about ninety degrees. It would have been an obvious matter of design choice to position the joist in an oblique or perpendicular angle relative to the floorboard as applicant stated in specification page 11, lines 1-6, since applicant has not disclosed having the oblique angle solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Oliveri's invention.

In regard to claim 13: Oliveri discloses the claimed invention except each of the side portions includes at least one opening therein for venting an area between the board and the cover when the cover is positioned on the board. It would have been obvious to one of ordinary skill in the art at the time of invention was made to drill an hole on both side portions in order to create at least one opening for air ventilation between cover and board.

In regard to claim 16: Oliveri discloses the claimed invention except the cover's side portions include inwardly bent portions for engaging the bottom of the floorboard. Pasterchick teaches Fig. 1, page 1, paragraph 0019, the cover's side portions 6 and 8 having inwardly bent portions 10 for engaging the bottom of the floorboard.

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver and Pasterchick as applied to claim 8 above, and further in view of US Patent No. 5,775,048 Orchard.**

In regard to claim 11: Oliveri discloses the claimed invention except the joist is positioned perpendicular to the floorboard. Orchard teaches Fig. 1 the joist 11 is perpendicular to plank 10. It would have been obvious to one of ordinary skill in the art at the time of

invention was made to provide the deck with joists in order to support the floorboard against breakage causes by people walking on the floorboard.

***Allowable Subject Matter***

Claims 4, 14 and 20 appear drawn to allowable subject matter but final determination will be made after all objections and 112 matters have been corrected.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,351,458	Lehe
US Patent No. 6,401,286	Brenn
US Patent No. 6,594,961	Leines
US Patent No. 6,044,598	Elsasser et al.
US Patent No. 5,735,097	Cheyne
US Patent No. 5,913,784	Hite
US Patent No. 6651398	Gregori
US Patent No. 6,584,748 B2	Bresnahan
US Patent No. 5,901,518	Harkins
US Patent No. 6,694,681 B1	Andres

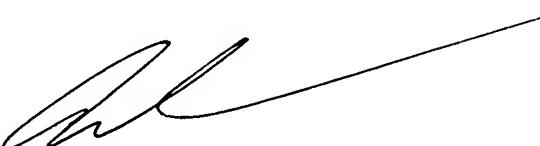
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (703) 305-4241 and Fax number is 703-872-9306. The examiner can normally be reached on Monday-Friday from 8:00-

5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl Friedman can be reached at (703) 308-0839.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

~  
Nahid Amiri  
Examiner  
Art Unit 3635  
January 11, 2005



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600

FIG 1

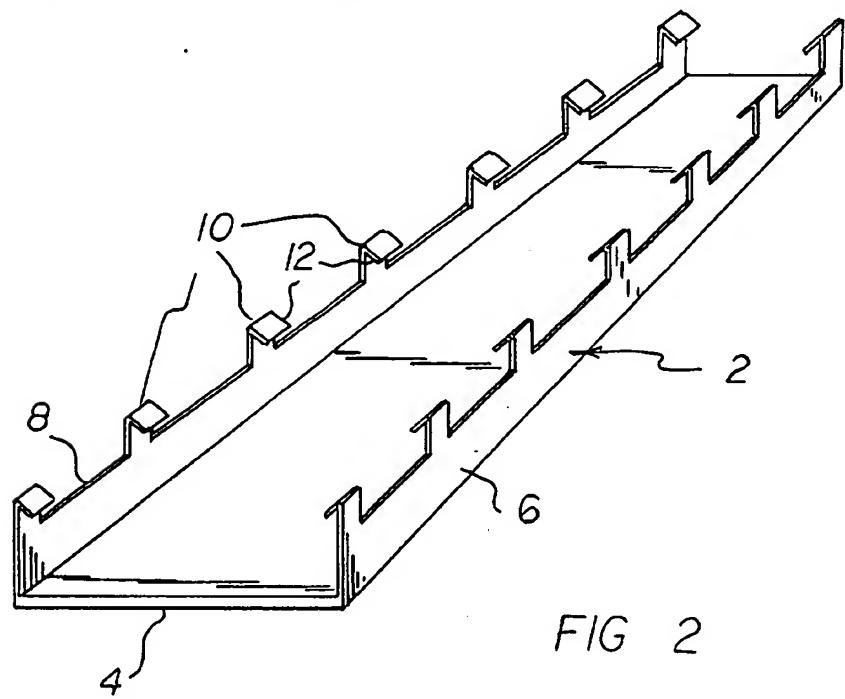
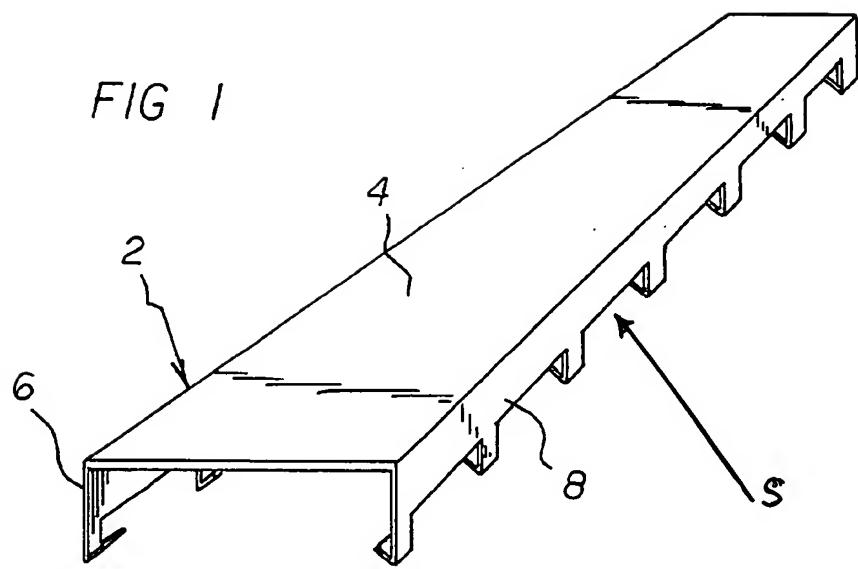


FIG 2